

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIVIAN PEÑA; FRANCISCO FERNANDEZ,

Plaintiffs,

-against-

GENERAL MOTORS FINANCIAL COMPANY,
INC.; AND MARY BARRA, *et al.*,

Defendants.

20-CV-9294 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiffs Vivian Peña and Francisco Fernandez submitted a document to this Court titled, “Civil Court of the City of New York, Application for Summons.” Plaintiff Vivian Peña submitted a completed and signed request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees, captioned for this Court. Plaintiff Francisco Fernandez did not sign the “Civil Court of the City of New York, Application for Summons,” and he did not submit an IFP application. The Clerk of Court opened Plaintiffs’ submissions as a new civil action and assigned docket number 20-CV-9294.

By order dated December 22, 2020, the Court directed that Plaintiffs, within thirty days, must either pay the \$400.00 in fees¹ or, in the alternative, Plaintiff Francisco Fernandez must complete, sign, and submit an IFP application. The Court also directed Plaintiff Francisco Fernandez to complete, sign, and submit a declaration indicating that he has read the “Civil Court of the City of New York, Application for Summons,” and he is a plaintiff in this action. That order specified that failure to comply would result in dismissal of the complaint.

¹ On December 1, 2020, the filing fees required to file a federal civil action increased to \$402.00 – a \$350.00 filing fee plus a \$52.00 administrative fee. Because Plaintiffs’ action was filed prior to December 1, 2020, the increased administrative fee does not apply to this action.

To date, Plaintiffs have not complied with the Court's December 22, 2020 order. On December 28, 2020, however, Plaintiffs filed an amended complaint (ECF No. 4) that is not signed by either Plaintiff. On March 12, 2021, Plaintiff Francisco Fernandez submitted a letter to the Court requesting two weeks to pay the filing fees. (ECF No. 5.)

Within thirty days of the date of this order, each Plaintiff must sign the signature page of the amended complaint filed on December 28, 2020. The signature page of the amended complaint is attached to this order for Plaintiffs' convenience. Plaintiff Francisco Fernandez must also either pay the \$400.00 in filing fees or submit a completed and signed IFP application. An IFP application is also attached to this order for Plaintiff Fernandez's convenience. If Plaintiffs fail to comply with this order, this action will be dismissed without prejudice. If either Plaintiff fails to comply with this order, that Plaintiff's claims will be dismissed, and the case will proceed with only the Plaintiff who has complied with the Court's directives.

The Clerk of Court is directed to mail a copy of this order to Plaintiffs and note service on the docket. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 9, 2021
New York, New York



COLLEEN McMAHON
Chief United States District Judge

Case Number: 20-CV-9294 (CM)**V. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

12/18/20

Dated		Plaintiff's Signature	
Vivian		Peña	
First Name	Middle Initial	Last Name	
105 Worthington Road			
Street Address			
White Plains		New York	10607
County, City		State	Zip Code
(914) 751-1433		jes22765@hotmail.com	
Telephone Number		Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person
must submit a separate application))

-against-

CV _____ () ()

(Provide docket number, if available; if filing this with
your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(b) Rent payments, interest, or dividends	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

- | | | |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

Dated

Signature

Name (Last, First, MI)

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)